Filed 12/23/16 P. v. Baldwin CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. ANTHONY LEE BALDWIN, Defendant and Appellant.	A147588 (Del Norte County Super. Ct. No. CRF12-9177)

Anthony Lee Baldwin was convicted in 2012 of robbery (Pen. Code, § 211),[1] felony petty theft with theft priors (§§ 484, 666), and misdemeanor brandishing a knife (§ 417). He was sentenced to prison for a term of three years for the robbery plus six consecutive one-year enhancements for prior prison terms (§ 667.5, subd. (b); hereafter section 667.5(b)), and sentence was stayed on the other two convictions (§ 654). In 2015, Baldwin successfully petitioned under the Safe Neighborhoods and Schools Act (Proposition 47) to reduce three of the prior section 667.5 felony convictions to misdemeanors. He then filed a Proposition 47 petition in the instant case to resentence the felony theft as a misdemeanor and to dismiss four of the section 667.5(b) enhancements to his robbery sentence as no longer valid.

The trial court granted Baldwin's petition in part. Sentence was recalled on the felony theft, the offense was reduced to a misdemeanor, and sentence on that count was

[1] Undesignated statutory references are to the Penal Code.

imposed accordingly. The court, however, declined to resentence Baldwin on the robbery, leaving all of the section 667.5(b) enhancements in place.

Baldwin contends the trial court should have recalled his entire sentence and considered the validity of the sentencing enhancements, or exercised its discretion to strike one or more of the enhancements pursuant to section 1385. We disagree that the court was required to structure a new sentence under these circumstances. We further find the section 667.5(b) enhancements were not subject to retroactive reduction under Proposition 47 and remained validly imposed. We therefore affirm.

I. BACKGROUND

The underlying information in this case charged Baldwin with second degree robbery (§ 211), petty theft with three prior theft-related convictions (§§ 484, 666), and misdemeanor brandishing a knife (§ 417). The information also alleged, under section 667.5(b), that in six separate instances, Baldwin had been convicted of a felony, served a prison term for that felony, and in each instance had not remained free of subsequent prison custody or felony conviction for a period of five years. Four of the section 667.5(b) enhancements are relevant here: a June 1995 conviction (Monterey County) for assault with a deadly weapon or force likely to produce great bodily injury (former § 245, subd. (a)(1)); November 1998 (Santa Cruz County) and September 2000 (Monterey County) convictions for possession of a controlled substance (Health & Saf. Code, former § 11377); and a November 2003 (Santa Cruz County) conviction for making or passing a fictitious check (§ 476).[2]

On June 12, 2012, Baldwin was convicted by jury trial on all three counts. Baldwin admitted all six section 667.5(b) enhancements. The trial court sentenced Baldwin to a term of nine years in state prison—a three-year middle term for the robbery,

[2] The two other section 667.5(b) enhancements were for using or threatening force against the property or person of a crime victim or witness who has provided assistance to law enforcement (§ 140) and taking a vehicle without the owner's consent (Veh. Code, § 10851).

with six one-year consecutive sentence enhancements.[3] This court affirmed the judgment. (*People v. Baldwin* (Nov. 19, 2013, A136164) [nonpub. opn.].)[4]

In 2014, California voters passed Proposition 47, which was intended to "ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K–12 schools, victim services, and mental health and drug treatment." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70.) To that end, Proposition 47 reduced most possessory drug offenses and thefts of property valued at less than $950 to straight misdemeanors and created a process for persons currently serving felony sentences for those offenses to petition for resentencing (§ 1170.18).

In July 2015, Baldwin sought reduction of his felony petty theft conviction to a misdemeanor and argued that reduction of his 1998, 2000, and 2003 convictions to misdemeanors precluded their use as §667.5(b) enhancements in his current case.[5] Baldwin attached to his pro se petition copies of Santa Cruz County Superior Court orders granting his section 1170.18 petitions related to his 1998 and 2003 convictions, and a copy of his 1170.18 petition in Monterey County regarding his 2000 conviction.[6]

The court appointed counsel to represent Baldwin on the section 1170.18 resentencing petition. Baldwin submitted a memorandum of points and authorities and written argument for resentencing, and the People filed written opposition. Hearings

---

[3] Pursuant to section 654, the court imposed and suspended a three-year sentence for the felony petty theft conviction and a one-year sentence for the misdemeanor brandishing conviction.

[4] A related habeas corpus petition was summarily denied on the same date.

[5] Baldwin argued that if enhancement for those convictions were stricken, his 1995 felony conviction no longer met section 667.5(b) enhancement requirements because he would be deemed to have remained free of prison custody and felony conviction for five years thereafter.

[6] While not included in this record, a copy of a Monterey Superior Court order granting Baldwin's petition was later filed with the trial court and stipulated by the parties to be a valid order.

were held in October and November 2015. On February 2, 2016, the court issued its "Ruling Denying Request Under Proposition 47 to Resentence Without Enhancements." The court denied resentencing on the base robbery count, finding that the "the judgment is final and the enhancements were correctly imposed at the time of sentencing." On February 11, 2016, the court granted Baldwin's resentencing petition as to the petty theft conviction. Baldwin filed a timely notice of appeal.

II. DISCUSSION

Baldwin contends he was entitled to a plenary resentencing hearing on all counts and enhancements, and that the trial court was required to determine the validity of the section 667.5(b) enhancements as of the time of resentencing. We disagree.

A. *Section 667.5(b) Enhancements*

We address first Baldwin's challenge to the sentence enhancements imposed for his prior felony prison commitments under section 667.5(b). "Imposition of a sentence enhancement under [section 667.5(b)] requires proof that the defendant: (1) was previously convicted of a felony; (2) was imprisoned as a result of that conviction; (3) completed that term of imprisonment; and (4) did not remain free for five years of both prison custody and the commission of a new offense resulting in a felony conviction." (*People v. Tenner* (1993) 6 Cal.4th 559, 563.) When found to be true, imposition of the one-year consecutive sentence enhancement is "mandatory unless stricken." (*People v. Langston* (2004) 33 Cal.4th 1237, 1241.) "[F]ailure to impose or strike [the] enhancement is a legally unauthorized sentence . . . ." (*People v. Bradley* (1998) 64 Cal.App.4th 386, 391.)

Baldwin argues that Proposition 47 required the trial court to determine the validity of the sentence enhancements as of the time of his resentencing. He insists that, at the time of his Proposition 47 resentencing hearing, three of his prior convictions were misdemeanors "for all purposes" pursuant to section 1170.18, and no longer qualified as

section 667.6(b) enhancements.[7] Section 1170.18, subdivision (k) provides that "[a]ny felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in her or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 or Title 4 of Part 6."

We consider the proper interpretation of the statutory language that a resentenced conviction "shall be considered a misdemeanor for all purposes," and the extent to which this provision has retroactive application. Does reduction of a section 667.5 felony to a misdemeanor retroactively invalidate its use as an enhancement to a noneligible felony base term when sentencing occurred prior to the effective date of Proposition 47? We conclude that it does not.

"Whether a statute operates prospectively or retroactively is, at least in the first instance, a matter of legislative intent. When the Legislature has not made its intent on the matter clear with respect to a particular statute, the Legislature's generally applicable declaration in section 3 provides the default rule: 'No part of [the Penal Code] is retroactive, unless expressly so declared.' " (*People v. Brown* (2012) 54 Cal.4th 314, 319.) This question of statutory construction is an issue of law, which we review independently. (*Raef v. Appellate Division of Superior Court* (2015) 240 Cal.App.4th 1112, 1120.) The principles for interpreting a proposition enacted by popular vote are the same as those for interpreting a statute enacted by our Legislature. (*People v. Park* (2013) 56 Cal.4th 782, 796.) We start with the text, and if its plain meaning is unambiguous, we end there as well. (*People v. Superior Court* (*Zamudio*) (2000)

[7] This issue is presently pending before our Supreme Court. (*People v. Valenzuela* (2016) 244 Cal.App.4th 692 (*Valenzuela*) review granted Mar. 30, 2016 (S232900). The high court has also granted review in several related cases, pending disposition in *Valenzuela*. (See, e.g., *People v. Carrea* (2016) 244 Cal.App.4th 966, review granted Apr. 27, 2016 (S233011); *People v. Ruff* (2016) 244 Cal.App.4th 935, review granted May 11, 2016 (S233201), *People v. Williams* (2016) 245 Cal.App.4th 458, review granted May 11, 2016 (S233539).)

23 Cal.4th 183, 192.) If the meaning is ambiguous, we may also consider the initiative's purpose and intent. (*People v. Superior Court* (*Pearson*) (2010) 48 Cal.4th 564, 571; *Zamudio,* at pp. 192–193.)

" ' "When the language [of an initiative measure] is ambiguous, 'we refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet.' " ' [Citation.] 'In other words, our "task is simply to interpret and apply the initiative's language so as to effectuate the electorate's intent." ' " (*People v. Arroyo* (2016) 62 Cal.4th 589, 593.) " '[W]e "must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." ' " (*Lopez v. Superior Court* (2010) 50 Cal.4th 1055, 1063, disapproved on other grounds in *People v. Harrison* (2013) 57 Cal.4th 1211, 1230, fn. 2.) Proposition 47 directs that its provisions "shall be liberally construed to effectuate its purposes." (Voter Information Guide, *supra*, text of Prop. 47, § 18, p. 74.)

We find nothing in the language of Proposition 47 indicating that subdivision (k) of section 1170.18 was intended to have the retroactive collateral consequences urged by Baldwin. Proposition 47 contains no provision declaring it automatically retroactive. "Instead, it provides procedures making its provisions *available* retroactively to certain offenders who petition for resentencing or redesignation of their convictions. [Citations.] Thus, Proposition 47 has retroactive effect only to the extent section 1170.18 provides a procedure to petition for reclassification or resentencing." (*People v. Jones* (2016) 1 Cal.App.5th 221, 229, review granted Sept. 14, 2016 (S235901).)[8] As the People note, Proposition 47 has no mechanism to permit a trial court to strike an enhancement attached to a noneligible conviction, such as Baldwin's robbery conviction. "Absent express language in section 1170.18 allowing the redesignation, dismissal, or striking of

[8] We consider the reasoning of *People v. Jones*, *supra*, 1 Cal.App.5th 221 (rev. granted) persuasive. (Cal. Rules of Court, rules 8.1105(e)(1)(B), 8.1115(e)(1).)

past sentence enhancements, we cannot infer voters intended the Act to apply retroactively to past sentence enhancements." (*Jones*, at p. 230.)

People v. Rivera (2015) 233 Cal.App.4th 1085 focused on the similarity between section 1170.18, subdivision (k)'s language that a conviction reduced to a misdemeanor under that section "*shall be . . . a misdemeanor for all purposes*," and section 17, subdivision (b)'s language which provides that a wobbler offense sentenced as a misdemeanor (and in the other circumstances specified in § 17, subd. (b)) "*is a misdemeanor for all purposes.*" (*Rivera*, at p. 1100.) In holding that section 1170.18, subdivision (k) does not apply retroactively, *Rivera* noted that our Supreme Court, in construing the similar language from section 17, subdivision (b), held that the reduction of an offense to a misdemeanor does not apply retroactively. (*Rivera*, at p. 1100, citing *People v. Feyrer* (2010) 48 Cal.4th 426, 438–439.) "We presume the voters 'intended the same construction' for the language in section 1170.18, subdivision (k), 'unless a contrary intent clearly appears.' " (*Rivera*, at p. 1100; see *People v. Shabazz* (2015) 237 Cal.App.4th 303, 313–314; *People v. Noyan* (2014) 232 Cal.App.4th 657, 672.)

The Supreme Court has, however, spoken to the *prospective* application of sentencing enhancements based on felonies that are subsequently reduced to misdemeanors. (*People v. Park, supra*, 56 Cal.4th 782.) In *Park*, the defendant's conviction for a serious felony under section 667, subdivision (a), was reduced to a misdemeanor pursuant to section 17, subdivision (b), *prior* to the defendant's commission of his present offense. (*Park*, at pp. 737, 795.) The *Park* court held that once the conviction was reduced to a misdemeanor, it could no longer serve as the basis for the enhancement. "When the court properly exercises its discretion to reduce a wobbler to a misdemeanor, it has found that felony punishment, and its consequences, are not appropriate for that particular defendant." (*Park*, at p. 801.) The court also noted, however, that "[t]here is no dispute that . . . defendant would be subject to the section 667(a) enhancement had he committed and been convicted of the present crimes *before* the court reduced the earlier offense to a misdemeanor." (*Park*, at p. 802, italics added.) The reasoning of *Park* would seem to logically apply to a section 667(b)

enhancement as well. (See *People v. Abdallah* (2016) 246 Cal.App.4th 736, 739–740 [eliminating § 667.5(b) enhancement where the prior felony was reduced to a misdemeanor under Proposition 47 after the new conviction, but prior to sentencing on the new conviction]; cf. *People v. Gokey* (1998) 62 Cal.App.4th 932, 936 ["[s]entence enhancements for prior prison terms are based on the defendant's status as a recidivist, and not on the underlying criminal conduct, or the act or omission, giving rise to the current conviction"]; *In re Preston* (2009) 176 Cal.App.4th 1109, 1115 [purpose of § 667.5(b) enhancement is " 'to punish individuals' who have shown that they are ' "hardened criminal[s] who [are] undeterred by the fear of prison" ' "].) Baldwin's prison priors remained felonies at the time of his conviction for robbery, and at the time of his initial sentence for that robbery, and they properly served as the basis for mandatory sentence enhancement under section 667.5(b). (See Couzens et al., Sentencing California Crimes (The Rutter Group 2016), § 25:21, p. 25-99 ["offense originally sentenced to state prison as a felony meets all the requirements of [*People v. Tenner*, *supra*, 6 Cal.4th 559], notwithstanding its new misdemeanor status"].)

B. *"Plenary" Resentencing*

Baldwin argues that recall of his sentence under section 1170.18 on the theft count required the court to reconsider his entire sentence anew—and consequently consider the validity of section 667.5 priors as of the resentencing date. We again disagree.

Baldwin cites *People v. Roach* (2016) 247 Cal.App.4th 178 (*Roach*), *People v. Rouse* (2016) 245 Cal.App.4th 292 (*Rouse*), and *People v. Sellner* (2015) 240 Cal.App.4th 699, 701 (*Sellner*). His reliance on these authorities is misplaced.

In *Roach*, the defendant was sentenced to prison on three separate matters, with an aggregate prison term of four years and four months. (*Roach, supra*, 247 Cal.App.4th at p. 182.) The trial court granted Proposition 47 resentencing on the principal base term (possession of methamphetamine) and on one of the consecutive subordinate terms (receiving stolen property). The trial court then restructured Roach's sentence, selecting a new principal term, but imposing the same aggregate term. (*Ibid*.) Analogizing to resentencing after appellate reversal of a conviction underlying a principal term, the

Roach court held that "where a petition under section 1170.18 results in reduction of the *conviction underlying the principal term* from a felony to a misdemeanor, the trial court must select a new principal term and calculate a new aggregate term of imprisonment, and in doing so it may reconsider its sentencing choices." (*Id*. at p. 185, italics added.) The *Roach* court relied in part on *People v. Burbine* (2003) 106 Cal.App.4th 1250, where the trial court imposed the same aggregate sentence after reversal on one of three convictions. *Burbine* held that in such circumstances " 'the trial court is entitled to consider the entire sentencing scheme. Not limited to merely striking illegal portions, the trial court may reconsider all sentencing choices. [Citations.] This rule is justified because an aggregate prison term is not a series of separate independent terms, but one term made up of interdependent components.' " (*Burbine*, at p. 1258.)

Similarly, the trial court in *Sellner* originally imposed an aggregate sentence in two matters and subsequently granted the defendant's section 1170.18 petition to reduce her conviction in one of the cases to a misdemeanor. (*Sellner, supra,* 240 Cal.App.4th at p. 701.) Because the sentence on that conviction had been the principal term, upon resentencing, the trial court designated the conviction in the second case as the principal term. (*Id.* at pp. 700–701.) The reviewing court rejected the defendant's contention that the trial court could only reduce the sentence on the conviction that was the subject of the petition and lacked jurisdiction to modify other portions of the aggregate sentence. "When the *principal term* is no longer in existence, the subordinate term must be recomputed. That is the case here." (*Id.* at p. 702, italics added.)

The issue in *Rouse* differed. There, the defendant was sentenced to state prison for five years, with a commercial burglary count selected as the base term, doubled due to a qualifying strike, plus one year for a section 667.5(b) enhancement. (*Rouse, supra*, 245 Cal.App.4th at p. 295.) After granting the defendant's Proposition 47 petition on the burglary count, the court vacated the original sentence, selected a new base term on a different count, and again imposed the same aggregate prison term of five years. (*Id*. at pp. 295–296.) The question in *Rouse*, however, was whether the resentencing hearing conducted was properly characterized as a "critical stage" in the criminal process to

which the right to counsel attaches. (*Rouse, supra,* 245 Cal.App.4th at pp. 297, 300.) Noting that the trial court had vacated the original sentence, the *Rouse* court found that "a resentencing hearing on a petition under section 1170.18, subdivision (a), *under the circumstances of this case,* is akin to a plenary sentencing hearing. . . . [T]he statutory scheme . . . envisions, at least where multiple counts are at issue, as is the case here, that resentencing will occur anew, with the court exercising its sentencing discretion and restructuring the entire sentencing package. '*The purpose of section 1170.18 is to take the defendant back to the time of the original sentence and resentence him with the Proposition 47 count now a misdemeanor.*' [Citation.] 'If the petitioner is resentenced as a misdemeanor on an eligible count, but will remain sentenced as a felon on one or more other counts, *the court should resentence on all counts.*' " (*Rouse,* at pp. 299–300; Couzens et al., Sentencing California Crimes, *supra,* § 25:11, p. 25-64.) The resentencing hearing was therefore a "critical stage" to which the right of counsel attaches.

In contrast, Baldwin's successful Proposition 47 petition in his current case resulted only in a reduction on the stayed sentence for theft and had no effect on his executed sentence for robbery, or on any interdependent components of his aggregate sentence.[9] Unlike *Roach*, *Rouse* and *Sellner*, there was no basis under section 1170.18 to vacate Baldwin's principal term for robbery or any enhancements attached to it.[10]

C. *Equal Protection*

Baldwin insists it is a denial of his right to equal protection under the United States and California Constitutions (U.S. Const., 14th Amend., § 1; Cal. Const., art. I,

---

[9] We assume, without deciding, that the trial court would have discretion to reconsider all aspects of the original sentence if any material component of that sentence were affected by a Proposition 47 reduction. (*People v. Garner* (2016) 244 Cal.App.4th 1113, 1118.)

[10] Baldwin also argues he would be entitled to a new sentencing hearing under *In re Estrada* (1965) 63 Cal.2d 740, 745 ["[w]hen the Legislature amends a statute so as to lessen the punishment it has obviously expressly determined that its former penalty was too severe"] *Estrada* is not applicable where the judgment of conviction is final. (*Id.* at pp. 742–748; *People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1195–1196.)

§ 7) to deny resentencing on his prison priors because the reduction occurred after his original sentence, while allowing the benefit to a person, like the defendant in *People v. Abdallah*, *supra*, 246 Cal.App.4th 736, who obtained misdemeanor reduction following conviction but before sentencing. We find no merit in this contention.

The equal protection clause generally provides " 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes [of persons] in like circumstances in their lives, liberty, and property and in their pursuit of happiness.' " (*People v. Wutzke* (2002) 28 Cal.4th 923, 943.) To establish an equal protection violation, an appellant must first show "the state has adopted a classification that affects two or more similarly situated groups in an unequal manner." (*In re Eric J.* (1979) 25 Cal.3d 522, 530, italics omitted.) Assuming Baldwin and defendants such as the one in *People v. Abdallah*, *supra*, 246 Cal.App.4th 736, are similarly situated, "[a] refusal to apply a statute retroactively does not violate the Fourteenth Amendment." (*People v. Aranda* (1965) 63 Cal.2d 518, 532.) The California Supreme Court has rejected claims that the equal protection clause is violated where classes of criminal defendants are treated differently based on the effective date of a statute lessening the punishment for a particular offense. (*People v. Floyd* (2003) 31 Cal.4th 179, 188, 191; see *Sperry & Hutchinson Co. v. Rhodes* (1911) 220 U.S. 502, 505 ["the Fourteenth Amendment does not forbid statutes and statutory changes to have a beginning, and thus to discriminate between the rights of an earlier and later time"].) " 'The Legislature properly may specify that such statutes are prospective only, to assure that penal laws will maintain their desired deterrent effect by carrying out the original prescribed punishment as written.' [Citations.] The voters have the same prerogative." (*Floyd*, at p. 188.)

III. DISPOSITION

The judgment is affirmed.

_____
BRUINIERS, J.

WE CONCUR:

_____
JONES, P. J.

_____
SIMONS, J.